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Chicago's First Great Lawsuit

By Eugene E. Prussing

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The State Historical Society of Wisconsin

Separate No. 168

From the Proceedings of the Society for 1915

E445

.I2P9

(50)

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The case, the story of which is told in the following pages, may not have been Chicago's first lawsuit, but it probably was Chicago's first great lawsuit. It is entitled *Forsyth et al. v. Nash* and was begun in the court of the parish and city of New Orleans where it was decided in favor of the plaintiffs. It was then appealed to the Supreme Court of Louisiana in and for the Eastern District and there disposed of in June, 1816, in favor of the defendant.¹

The case of *Forsyth et al. v. Nash* has two claims to importance, aside from the immediate question whether or not Jeffrey Nash, a negro, should be returned to the plaintiffs as a runaway slave.

In the first place it set the seal of condemnation upon the reputation of the plaintiffs, one of whom was John Kinzie, the reputed "father of Chicago" and the other, his partner and kinsman, Thomas Forsyth, not because it disclosed that they claimed to be slaveholders, for there were many such in Illinois Territory at that time, including the governor, Ninian Edwards, but that they sought to hold Nash as a slave by virtue of a forged bill of sale, void, it is true, under the law, but none the less a fraud.

Secondly, it involved the questions, there necessarily and rightly decided by the Court, which the Supreme Court of the

¹ For the report of the case, see 4 Martin's Reports (Old Series) 385 (Louisiana). See also on the same general subject *Century Edition of The American Digest* (St. Paul, 1903), 44, 1095-1111. The historical aspects of the case have been treated by M. M. Quaife, *Chicago and the Old Northwest, 1673-1835* (Chicago, 1913), 150-52. The paper here printed was originally read by the author before the Chicago Literary Club on the evening of Nov. 16, 1914. As delivered it included the citation from Quaife, which has been excised from the paper as here printed.

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United States is said unnecessarily and wrongly to have decided in the famous Dred Scott case forty years later.² The latter also affirmed that a black man could not raise the question of his right to freedom in the federal courts, because he was not a citizen of the United States, and could not sue in its courts.

If these claims to distinction are sustained, the case may fairly be described as a great one. The immediate facts concerning the transaction to which it owed its origin are succinctly stated in the following extract:³

On May 22, 1804, articles of indenture were entered into which bound Jeffrey Nash, a "Negro man", to serve John Kinzie and Thomas Forsyth, "Merchants of Chicago," for the term of seven years. The instrument describes Nash as an inhabitant of Wayne County, although it was executed, apparently, at Chicago. The Chicago of 1804 was located in Wayne County, Indiana Territory, whose county seat was Detroit, over three hundred miles away. In return for meat, drink, apparel, washing, and lodging "fitting for a servant," Nash bound himself to the maintenance of an utterly impossible standard of conduct. Doubtless the quaint language of the indenture simply followed the customary form of such documents; it can scarcely have been expected that the bound man would live up to its numerous stipulations.

Nash signed the instrument by making his mark. It might reasonably be concluded, even in the absence of other information concerning him, that this indenture practically reduced him to slavery. That Kinzie and Forsyth chose to so regard Nash's status is shown by their treatment of him. He was taken to Peoria, Forsyth's place of residence from 1802 until 1812, and for many years held by the latter as a slave. At length he ran away from his bondage and made his way to St. Louis, and eventually to New Orleans, where he was said to have had a wife and children. Forsyth and Kinzie sought to recover possession of him and to this end a suit was instituted in the parish court; the case went ultimately to the Supreme Court of Louisiana, where an interesting decision was rendered.

The document which Kinzie and Forsyth and Nash signed and witnessed purports to have been executed "Enterchangeably" by the parties, but Nash probably never had a copy, this phrase being like many others, merely a legal fiction. Fortunately, the document has been preserved,⁴ and it is thus possible to print it here:

This Indenture Witnesseth that Jeffre Nash (Negro man) of the County of Wayne hath put himself servant and by these presence doth bind himself

² Dred Scott v. Sandford, 19 Howard Reports 393.

³ Quaife, *Chicago and the Old Northwest*, 150, 151.

⁴ The document is one of the Forsyth papers in the Draper Collection (1T1) of the Wisconsin Historical Society.

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voluntarily as a servant to Mess^{rs}. Kinzie & Forsyth Merchants of Chicago to serve said Kinzie & Forsyth their heirs or assigns after the manner of a servant to serve from the day of the date hereof for and dureing the full Term of seven Years next ensuing dureing all which time he the said servant his said Masters shall faithfully serve their Secrets keep their lawfully Command every where gladly Obey—he shall do no damage to his said Masters He shall not wast his Master's goods nor lend them unlawfully to others He shall not commit Fornication nor contract Matrimony within said Term, At dice Cards or any unlawfull game he shall not play whereby his said Masters may be damaged with his own goods or the goods of others dureing the said Term without licence of his said Masters he shall neither buy nor sell he shall not absent day nor Night from his said Masters service without their leave nor haunt Taverans or any plase or places without permission From said Masters but in all things behave himself as a faithfull Servant ought to do dureing the said Term and the said Masters shall provide for him the said Servant sufficient meat drink apparal washing and Lodgings fitting for a servant dureing said Term and for the true performance of all and every the said Covenants and agreements Either of the said parties bind themselves unto the other by these presents,— In Witness whereof the[y] have Enterchangeably put their hands and seals this twenty second day of May in the Year of our Lord one Thousand Eight hundred and four.

Signed sealed and delivered

in presence of Us
James Forsyth
John Lalime
Witness[es]

Kinzie & Forsyth
his
Jeffre + Nash
mark

Endorsed: Jeffre Nash Indenture 1804

The continuation of the story of the relations of Nash and his masters is found in the report already referred to, of the decision of the Supreme Court of Louisiana in the case of Forsyth et al. v. Nash. The marginal digest of the decision reported reads:

A negro will be presumed free, tho' purchased as a slave, if the purchase was made in a country in which slavery is not tolerated, unless it be shewn that he was before in one, in which it is.

The decision itself is reported in the following language:

Appeal from the court of the parish and city of New Orleans.

Martin, J. delivered the opinion of the court. The plaintiffs in this case claim the defendant, a negro man, as their slave. It therefore behooves them to show slavery *in him* and property *in them*.*

The evidence adduced for this purpose is:

1, A bill of sale by which the defendant was sold to them "to have and to hold the said negro man, and to dispose of him, as they shall think proper."

*But see Trudeau's Ex's vs. Robinette, January term 1817.

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This instrument, bearing date the 5th of September, 1803, was executed at Detroit, in the territory of Michigan, was there recorded, and is duly authenticated.

2. The deposition of David Delaunay, who swears he knows a Mr. Forsyth, at St. Louis, whose christian name he is ignorant of, but knows not the other plaintiff; that there was at Detroit, a mercantile house, under the firm of Kinsey & Forsyth, but he is ignorant whether Mr. Forsyth of St. Louis be one of that house; that he saw the defendant at Mr. Forsyth's in St. Louis, but does not know to whom he belonged.

3. The deposition of Nicholas Girod, who swears that, while he was mayor of New Orleans, the defendant was brought before him, and confessed he was a runaway and belonged to some person, the name of whom the witness does not recollect, who had promised him his freedom.

4. The deposition of A. B. Duchouquet, of St. Louis, who swore he never saw the defendant in the possession of the plaintiffs, because the plaintiffs lived at Peoria, in the Illinois territory; that the plaintiff, Forsyth, employed him in 1813, to stop the defendant; that he took him up in New Orleans and brought him before the mayor, where he confessed he had ranaway from the plaintiffs, and did not like to return to them on account of a wife and children he had in New Orleans.

5. The deposition of Pierre Le Vasseur, who knew the defendant in Peoria in the Illinois territory, about ten years ago. He was known and reputed to be a slave; the witness knew him in the possession of Forsyth for four years. He ranaway from Peoria, about six years ago: the witness some time after met him at Mauportuis, in the Illinois territory, and the defendant said he was ranaway from his master and was going to St. Louis.

On these facts the counsel contends that the slavery of the defendant and the property of the plaintiffs are fully proven.

I. The evidence of *slavery* resulting from the color of the defendant, (*Adelle vs. Beauregard*, 1 *Martin* 183,) from his declarations that he had a *master*, that he *belonged* to a man who had promised him his *freedom*, from his attempt to justify his unwillingness to return, by the circumstance of his having a wife and children in New Orleans, thereby tacitly admitting the obligation he was under of returning to the plaintiffs.

II. The *property* of the plaintiffs is said to be proven by the bill of sale.

The defendant's counsel shews that in the territories of Michigan and the Illinois, the only places, except New Orleans and St. Louis, which the defendant appears to have inhabited, *slavery does not exist*; that it is *forbidden by law*. The ordinance of congress of the year 1797 [1787], providing that "there shall be neither slavery nor involuntary servitude, in the said territory, otherwise than for the punishment of crimes, whereof the party shall have been convicted. Provided that any person *escaping into the same*, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her services as aforesaid."—Hence in the opinion of the counsel, a presumption arises that the defendant is free, which overweighs the contrary presumption which arises from the *color*.

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It is further contended that as the bill of sale could convey no title, unless the defendant had been *duly convicted of a crime*, or in case he owed services in one of the original states, and *had escaped* into the Michigan territory, the plaintiffs are bound to bring the defendant within one of these two cases; that if the defendant was convicted of a crime, by which he became bound to involuntary services, the record of this conviction ought to be produced; so ought, in the other case, evidence of the duty of involuntary service, in one of the original states and of *escape into the territory*; that the apparent unlawfulness of the authority, exercised by the plaintiffs over the defendant, to which he may have submitted from his ignorance of his right or of the means of asserting it, is not repelled by his admission that he had a *master*, that he *belonged* to a person who had promised him his *freedom*. For while it appears that the plaintiffs *de facto*, though not *de jure*, kept the defendant for a number of years in servitude, it cannot seem extraordinary that he should refer to them by the appellation of his *masters*, and the alleged promise of freedom may well be presumed to have been made to allure the defendant into submission. Neither is it said, can the admission of the defendant, that he *ran away* be received as conclusive evidence of a legal obligation to stay: flight from unlawful servitude being more generally resorted to, than the bold assertion of freedom. Kept for a number of years, perhaps from his birth, in bondage, the spirit of the injured negro is said to have been borne down, by the influence which long exerted mastery creates.

We are of opinion, that as the case affords no evidence of any residence of the defendant, in any country in which slavery is lawful, this case must be determined by the laws of the country in which the defendant dwelt when he came to the hands of the plaintiffs—that the ordinance of 1787, having proclaimed that slavery should not exist there, unless under two exceptions; the plaintiff[s] must bring the defendant under either of them, and having failed to do so, must have their claim rejected.

Whenever a plaintiff demands by suit, that a person whom he brings into court as a defendant, and thereby admits to be in possession of his freedom, should be declared to be his slave, he must strictly make out his case. In this, if in any, *actore non probante absolvitur reus*.

Here the plaintiffs have failed in a very essential point, proof of the alleged slavery of the defendant.

Their title can only have been lawful, at the time the bill of sale produced was made, on two grounds: the right of the vendor, or the liability of the object of the sale, must have been absolute or qualified. *Absolute*, viz. complete ownership and slavery, in the sole case of conviction of a crime by which freedom was *forfeited*. *Qualified*, viz. the right of reclaiming and conveying the defendant out of the territory into one of the original states, in which he owed involuntary servitude or labour. This qualified right could only exist in the case of the defendant's *escape*.

Now, it cannot be contended that this qualified right only was disposed of: that, which is the evident object of the sale, is the absolute right *to have and to hold during the natural life and to dispose as they please*. The conduct of the plaintiffs, towards the defendant, shews that it was this absolute right which

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they considered themselves as the purchasers of. This they unlawfully attempted to, and did successfully for a number of years, exercise, till the defendant sought his safety in flight. Their title to him, if it exists, must be grounded on his conviction of a crime. Now the evidence of this, is *a matter of record*: the paper must be produced or accounted for.

The parish court erred in sustaining the plaintiff's claim. Its judgment is therefore annulled, avoided and reversed, and this court doth order, adjudge and decree, that there be judgment for the defendant with costs.

Morse for the plaintiff; *Moreau* for the defendant.

"Thus," observes Quaife, "did the Supreme Court of the slave state of Louisiana uphold the free character of the soil of Illinois, and rescue a free man from bondage, at a time when slavery openly flourished here, and slaves were bought and sold and held in bondage even by such prominent characters as the governor of the territory."⁵

A recent thoroughgoing search of the records still preserved in Detroit shows no record of such bill of sale as was produced at the trial, though several other documents between 1800 and 1820 in which Kinzie and Forsyth were parties appear there.

The great political question involved in the decision was not raised, namely: Did Congress have the power to agree to the Ordinance of 1787, when in 1789 it confirmed it during the first Congress under the Constitution of the United States and assumed to forbid slavery in territories of the United States? This question was one of the two great issues raised in the Dred Scott case, the other being, did Congress have the power to forbid slavery in that part of the Louisiana Territory north of the state of Missouri, as was done by the act of 1820, known as the Missouri Compromise?

It is curious to trace the subsequent history of the Nash case and to find that it was cited on both sides by the judges in conflicting opinions. It is the earliest reported case, so far as appears, which involves the effect of the Ordinance of 1787. A number of cases subsequently arose in the border states north and south of the Ohio River, but until a later Kentucky case,⁶ the decisions of the courts were almost uniformly to the same effect as the Nash case. As the political question developed and became acute, however, the Southern states reversed their attitude and the trouble culminated in the Dred Scott case and the Civil War.

⁵ *Op. cit.*, 152.

⁶ *Graham v. Strader and Gorman*, 5 Ben. Monroe's Reports, 173.

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The first reported case in Louisiana in which the influence of *Forsyth et al. v. Nash* was shown was that of *Elizabeth Thomas, F. W. C. (free woman of color) v. Generis et al.*, decided at New Orleans by the Supreme Court of Louisiana, in December, 1840.⁷ This case also arose in Illinois, and the facts and the ruling of the court are as follows:

Plaintiff, who is a mulatto woman, and whom the defendant purchased as a slave, from one Vanlandingham, sues for her freedom. She alleges that she was born free; that by some means or other, Vanlandingham got possession of her when she was a child and conveyed her to Kentucky, where he held her in slavery until November, 1833, when she was carried to Shawneetown, in the State of Illinois, where she permanently resided, with the consent of her former master, until February, 1837; that she was taken to the parish of Jefferson, in this State, and sold by Vanlandingham to the defendant. She further states, that according to the laws of the State of Illinois, she was emancipated by her residence therein, even had she been a slave when she first entered the State. She prays for judgment, declaring her to be free. Defendant pleads that plaintiff is a slave for life, that he bought her for such from Vanlandingham, denies all the allegations contained in her petition, calls his vendor in warranty, and prays that he be dismissed, with costs, and for judgment against his warrantor, as the case may turn out. The district court gave judgment in favor of the plaintiff, decreeing her to be free, and also gave judgment in favor of the defendant against his warrantor, for the price of the slave. From this judgment, the defendant and his warrantor both appealed.

The evidence shows that the warrantor purchased the plaintiff as a slave, in the State of Virginia, in or about 1814; that he brought her to his farm in Kentucky, where she remained as a slave, until about the year 1832 or 1833; that plaintiff being then sick, wished and requested to be transported to Shawneetown, in the State of Illinois, to be there put under the care of an eminent physician, by whom she expected to be cured; that during the warrantor's absence, she was taken over to Shawneetown, within the knowledge and with the consent of his overseer; and that she resided in Illinois until the year 1837, when she was brought down to Louisiana, and sold to the defendant by the warrantor. It is also in evidence, that the warrantor had a house and store in Shawneetown, that his family resided there for some time, that plaintiff lived at her master's house in that place, and that the warrantor was there himself at various times. A respectable witness also swears that Vanlandingham told him that plaintiff went to Illinois, with his (warrantor's) knowledge and consent. The constitution of the State of Illinois was produced in evidence, and by the art. 6, sect. 1, it is declared that "slavery or involuntary servitude shall not be thereafter (after 1819) introduced into that State," and by the second section of the same article, it is declared that "no person bound to labor in any other State shall be bound to labor in Illinois." Judge Scates, who was examined and gave his opinion as a lawyer on the above articles of

⁷ 16 Louisiana 483.

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the constitution of Illinois, says, that, "in his opinion, a residence by a slave from another State, in Illinois, with the consent of the owner and slave, would never operate an emancipation of the slave, but if it were against the will and consent of the slave, she would become free *immediately*." He further gives it as his opinion that the consent or non-consent of the owner is immaterial; if the slave be held in *involuntary* servitude in Illinois, she becomes immediately free by the constitution; but that cannot be involuntary to which *she consents*, by the said constitution. He further says that there has never been any decision of the supreme court of said State upon the first and last cases stated in his answer, but that upon the other case of involuntary servitude, there are several decisions in favor of liberty, although they were restrained under indentures of service, which were held to be defective under the constitution.

After some discussion of these facts and the law applicable, the Court quotes from one of its former decisions, as follows:

The fact of a slave being taken to a country, where slavery or involuntary servitude is not tolerated, operates on the condition of the slave, and produces immediate emancipation.

It then continues with its opinion:

This question is now far from being new in our jurisprudence, and its solution by us, in this case, depending merely on the facts shown by the record, must be in accordance with that of the inferior court.

The opinion of Judge Scates, who was examined as a witness, and which is relied on by the appellants, however respectable it may be, must yield to the principle so well recognized by our laws that a slave has no will, and cannot give any consent; voluntary servitude, in the strict sense of the word, is unknown to us, and whenever an individual, who is not a slave, binds himself to labor for another, his consent becomes the subject of a civil obligation or contract. This court cannot regard any act, admission or consent of a person held in slavery, as operating to deprive him of a right to freedom. [Forsyth v. Nash] 4 Martin, 385.

* * * * *

It is therefore ordered, adjudged and decreed, that the judgment of the district court be affirmed, with costs.

The next time the Nash case was cited was in a famous and leading case decided by the Supreme Court of the United States, in 1847, entitled, *Jones v. Van Zandt*.⁸ This was a suit brought in Ohio by a Kentuckian against a citizen of the former state to recover a penalty of \$500 under the fugitive slave law of 1793 for concealing and harboring his fugitive slave. The Court below

⁸ 5 Howard 215.

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divided in opinion and certified the questions involved to the Supreme Court of the United States for decision.

Salmon P. Chase, afterward chief-justice of the United States, was the defendant's counsel below, and in the Supreme Court at Washington there was associated with him, William H. Seward. Opposing them was J. H. Morehead, as counsel for the plaintiff. The chief questions submitted to the Court were:

1. Is the fugitive slave law of 1793 in violation of the Constitution of the United States?

2. Is it in violation of the Ordinance of 1787?

The Court unanimously held that the fugitive slave law was valid. It cited *Forsyth et al. v. Nash*, however, to the effect that the Ordinance of 1787 and the laws of the several states forbidding slavery were in full force as to non-fugitive negroes.

The concluding paragraph of the opinion of the Court which follows the citation of *Forsyth et al. v. Nash* answers the political arguments made in the case, and that answer formed the basis for the rise of the Free Soil and Republican parties in which the eminent counsel took so great a part and through which they finally won a decision in their favor.

Said the Court, by Justice Woodbury:

Before concluding, it may be expected by the defendant that some notice should be taken of the argument, urging on us a disregard of the constitution and the act of Congress in respect to this subject, on account of the supposed inexpediency and invalidity of all laws recognizing slavery or any right of property in man. But that is a political question, settled by each State for itself; and the federal power over it is limited and regulated by the people of the States in the constitution itself, as one of its sacred compromises, and which we possess no authority as a judicial body to modify or overrule.

Whatever may be the theoretical opinions of any as to the expediency of some of those compromises, or of the right of property in persons which they recognize, this court has no alternative, while they exist, but to stand by the constitution and laws with fidelity to their duties and their oaths. Their path is a strait and narrow one, to go where that constitution and the laws lead, and not to break both, by traveling without or beyond them.

Two other cases decided in the Supreme Court of the United States about this time, in which the *Nash* case was not cited by the Court, nevertheless involved similar questions. The famous case of *Prigg v. The Commonwealth of Pennsylvania*⁹

⁹ 16 Peters 539.

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(1842) held that an act of the legislature of Pennsylvania forbidding the removal of fugitive slaves from that state, for the purpose of enslaving them, was unconstitutional; and the case of *Strader et al. v. Graham*¹⁰ that it was exclusively in the power of Kentucky to determine for itself whether the employment of slaves in another state should, or should not, make them free on their return to Kentucky.

Meanwhile, the state of Missouri had been following the doctrine of the Nash case in a series of cases in which the facts were peculiarly similar to those which afterward arose in the *Dred Scott* case in the same court. The Supreme Court of Missouri in 1824 in the case of *Winny v. Whitesides*,¹¹ in 1828 in *La Grange v. Chouteau*,¹² in 1833 in *Julia v. McKinney*,¹³ in 1836 in *Rachael v. Walker*,¹⁴ and in 1837 in *Wilson v. Melvin*,¹⁵ held the doctrine that taking slaves into Illinois or into Louisiana Territory north of Missouri, freed them and that the courts of Missouri, when such slaves were brought into that state, would declare them free.

A brief history of the *Dred Scott* case may not be out of place. Scott's claim to liberty for himself, wife, and children was based on two facts. He had been voluntarily taken by his master, a surgeon in the United States army, to the United States military post at Rock Island in 1834 and held there as a slave until 1836; thence he was taken to Fort Snelling, Minnesota, then a part of Louisiana Territory north of the Missouri Compromise line, dedicated to freedom by the act of 1820. At the latter place he married a slave, similarly brought by her master, an officer in the United States army, from slave territory, and two children were born to them in free territory. Subsequently, the entire family was removed by its owners to Jefferson Barracks, near St. Louis, and Scott sued for his freedom, first in the state court. The case is entitled *Scott v. Emerson*. A verdict and judgment

¹⁰ 10 Howard 82.

¹¹ 1 Mo 473.

¹² 2 Mo 20.

¹³ 3 Mo 270.

¹⁴ 4 Mo 350.

¹⁵ 4 Mo 592.

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in Scott's favor resulted,¹⁶ and Doctor Emerson in 1852 appealed to the Supreme Court of Missouri.

After the rise of the Free Soil party and the great Compromise procured by Henry Clay's dying efforts in 1850, in which the Missouri Compromise was practically repealed, a new fugitive slave law was enacted and the question of slavery was supposed to have been settled forever. The Supreme Court of Missouri was divided in opinion, two of the judges voting to reverse the judgment in favor of Dred Scott and the chief-justice dissenting. The decision not only reversed Scott's case, but also the entire series of previous decisions made by the same Court to which I have referred. The majority of the Court in its opinion uses this language:¹⁷

Cases of this kind are not strangers in our courts. Persons have been frequently here adjudged to be entitled to their freedom, on the ground that their masters held them in slavery in territories or States in which that institution was prohibited. From the first case decided in our courts, it might be inferred that this result was brought about by a presumed assent of the master, from the fact of having voluntarily taken his slave to a place where the relation of master and slave did not exist. But subsequent cases base the right "to exact the forfeiture of emancipation," as they term it, on the ground, it would seem, that it is the duty of the courts of this State to carry into effect the constitution and laws of other States and territories, regardless of the rights, the policy or the institutions of the people of this State.

Then the Court says that the states of the Union, in their municipal concerns, are regarded as foreign to each other; that the courts of one state do not take notice of the laws of other states, unless proved as facts, and that every state has the right to determine how far its comity to other states shall extend; and it is laid down, that when there is no act of manumission decreed in the free state, the courts of the slave states cannot be called to give effect to the law of the free state. Comity, it alleges, between states, depends upon the discretion of both, which may be varied by circumstances. And it is declared by the court:

Times now are not as they were when the former decisions on this subject were made. Since then not only individuals but States have been possessed

¹⁶ The decision in the lower court is not reported.

¹⁷ 15 Mo 576.

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with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures, whose inevitable consequence must be the overthrow and destruction of our government. Under such circumstances it does not behoove the State of Missouri to show the least countenance to any measure which might gratify this spirit. She is willing to assume her full responsibility for the existence of slavery within her limits, nor does she seek to share or divide it with others.

Chief-Justice Gamble dissented from the other two judges, in the following language:

In this State, it has been recognized, from the beginning of the government, as a correct position in law, that a master who takes his slave to reside in a State or territory where slavery is prohibited, thereby emancipates his slave: * * * These decisions, which come down to the year 1837 seem to have so fully settled the que[s]tion, that since that time there has been no case bringing it before the court for any reconsideration until the present. In the case of *Winney vs. Whitesides*,¹⁸ the question was made in the argument, "whether one nation would execute the penal laws of another," and the court replied in this language, ("*Huberus*," quoted in 4 *Dallas* 375,) says, "personal rights or disabilities, obtained or communicated by the laws of any particular place, are of a nature which accompany the person wherever he goes."

He further observed that in the case of *Rachel v. Walker*, the act of Congress known as the Missouri Compromise was held as operative as the Ordinance of 1787.

While the *Dred Scott* case was pending in the Supreme Court of Missouri, Doctor Emerson, his owner, sold him and his family to a Mr. Sandford, a resident of New York, and after the case came back to the local court in St. Louis, it was agreed between the counsel for Scott and Sandford that because of the diversity of citizenship of the then parties to the suit a case should be begun in the United States Circuit Court, and that the case in the local court should await the decision of the one in the United States court.

Chicagoans have an especial interest in the *Dred Scott* case since R. M. Field, the father of their famous fellow-citizens, Eugene and Roswell M. Field, was *Dred Scott's* counsel throughout the long litigation over his freedom, and by his self-sacrificing and persistent efforts laid the foundation for subsequent events of most momentous character.

¹⁸ 1 Mo 473.

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According to the agreement noted Dred Scott sued Mr. Sandford in the United States Circuit Court, for damages, because the latter held Scott and his family as slaves. This was the form of action usual for the purpose of asserting one's freedom. If the plaintiff recovered, the right of himself and the members of his family to freedom was thereby established. If he failed, he and they remained slaves.

The result of the trial was that Scott and his family were denied their freedom.¹⁹ The case was appealed and in the Supreme Court of the United States it was twice argued, and the opinion filed on March 6, 1857, two days after President Buchanan, in his inaugural speech, had foreshadowed the opinion as a basis for the belief that the slavery question would thereby be disposed of for all time. The opinion of the majority of the Court, each of the judges filing a separate opinion as was then usual in cases involving constitutional questions, was to the following effect:

1. The decision in the Kentucky case,²⁰ that the question whether or not Scott was a slave, was a local question, in which they would be governed by the decision of the Supreme Court of Missouri, even though that decision reversed a long series of contrary decisions which for forty years had constituted the settled law of the state, was reaffirmed.

2. That Scott, being a slave, was in no sense a citizen of the United States, though the Constitution provided that slaves should be represented in the lower house of Congress to the extent of three-fifths of their number in the apportionment of representatives, and the Constitution elsewhere referred to them as "persons held to labor."

3. That Scott's removal to Rock Island by his master was in pursuit of his duties as an officer of the United States army and therefore not voluntary in the sense necessary to free Scott. That Fort Snelling to which place he was later removed was in the territory of the United States, and that the act of Congress in 1820 forbidding slavery north of the Missouri Compromise line was beyond the power of Congress and unconstitutional, so that it availed Scott nothing toward his freedom.

¹⁹ This decision is not reported, but it is referred to in the decision rendered somewhat later by the United States Supreme Court.

²⁰ *Strader et al. v. Graham*, 10 Howard 82.

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The political effect of the decision is history. Our present interest is with the Nash case. Justice Campbell, in the opinion filed by him concurring with Chief-Justice Taney in the decision of the case, declared, among other things:

that in general, the *status*, or civil and political capacity of a person, is determined, in the first instance, by the law of the domicile where he is born; that the legal effect on persons, arising from the operation of the law of that domicile, is not indelible, but that a new capacity or *status* may be acquired by a change of domicile. That questions of *status* are closely connected with considerations arising out of the social and political organization of the State where they originate, and each sovereign power must determine them within its own jurisdiction.

He then cited the Nash case, among others, as authority for the following proposition:

A large class of cases has been decided upon the second of the propositions above stated, in the Southern and Western courts—cases in which the law of the actual domicile was adjudged to have altered the native condition and *status* of the slave, although he had never actually possessed the *status* of freedom in that domicile.

One might suppose that with the final decision of the Dred Scott case in the Supreme Court of the United States, the course of Forsyth et al. v. Nash as authority was run. But the question of slavery, like the tail of the snake, lived even after the body was dead, and in 1871 this case was again cited as authority, this time in *Osborn v. Nicholson*,²¹ a decision by the United States Circuit Court in and for the District of Arkansas, written by Justice Caldwell, who for forty years sat on that circuit.

The case was one of many brought in that state and others to recover on promissory notes and other contracts given for the purchase of slaves before the war, against the payment of which the debtors pleaded the emancipation of the slave, and, in this particular case, the reconstructed constitution of Arkansas made in 1868, which expressly declared void all contracts of that character. Bills of sale for slaves contained a covenant that the slave was a slave for life and it was pleaded that there had been a breach of this warranty so that the holders of notes could not recover.

²¹ 1 Dillon 219.

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Judge Caldwell was a very vigorous man, who always held strong views, and one can imagine the joy with which he cited in his opinion in this case the Dred Scott case in support of his view that the note in question was void. In the course of his opinion referring to the fugitive slave provision of the Constitution of the United States, he cited among others the case of Forsyth et al. v. Nash as indicating that "the courts uniformly held that if a master voluntarily permitted his slave to go into a free state, or attempted to travel with his slave through a free state, the slave was a free man the moment he entered the free state." Then after setting forth at length the extraordinary views of the Supreme Court of the United States announced in the Dred Scott case in support of the supposed sovereign power of the state of Missouri to deal as it pleased with slaves within its borders, he continued:

A majority of the court maintained that the right of the state of Missouri over the subject of slavery within her borders was supreme, thus in effect, holding that this right was paramount to the obligations of a marriage contract.

Now if this power of the states over the institution of slavery was so absolute and uncontrollable as to authorize them to destroy the obligation of the most sacred contract known in civil society, in the interest of slavery, it would be strange indeed, if they did not possess the power to annul slave contracts in the interests of freedom, humanity, and morality. It is a pleasing reflection to know that the law laid down in this celebrated case, and which was believed by many to be at variance with the rights of freedom, can now be quoted in support of, and is a full authority for, the "rights of the states" to abolish slavery, and obliterate all contracts relating to it.

A. H. Garland, afterwards attorney-general under President Cleveland and formerly a member of the Confederate Congress, was plaintiff's counsel, while Judge Rose, a noted legal writer, represented the defendant. The case was appealed to the Supreme Court of the United States and there on April 22, 1872, the decision of the lower court was reversed²² under the authority of the Dartmouth College case, there being no power to impair the obligation of contracts and the alleged breach of warranty constituting no defense. The line which follows the decision of the Court has a pathetic significance. It is: "The Chief Justice [Chase] dissented in this case * * *"

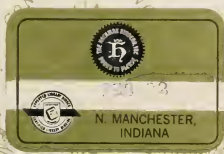
This constitutes the entire story of the monument of Jeffrey Nash. Whether or not John Kinzie was in anywise responsible

²² 80 U S (13 Wallace) 654.

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for that fraudulent bill of sale and the deception of the Louisiana courts for which it was used in the dastardly attempt to make a slave of a free man, will perhaps never be determined. The discovery of the Nash contract with its relation to the Nash case, and the publication of the story prove that it is not always safe to honor the memory of a man even more than sixty years after his death; while the persisting influence of the wrong attempted to be done to Nash, in its effect upon those responsible for it, again proves the great truth written by Schiller in *Piccolomini*, "It is the curse of evil deed that it must, constant, evil breed."







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